



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 111 of 2000

E M M.....PETITIONER

VERSUS

N K M.....RESPONDENT

JUDGMENT

Before me is an amended petition for divorce filed by the husband on 4th August, 2004.

He seeks dissolution of the marriage solemnized with the Respondent on 23rd August, 1997 on the grounds of cruelty and desertion by the Petitioner.

So far as the desertion is concerned, he has alleged that the Respondent deserted him since 4th March, 2000.

The Respondent in her Answer filed on 18th August, 2004 has denied those allegations made by the Petitioner. She has also filed her cross-petition on the ground of cruelty and desertion.

The Petition was partly heard by Late Kamau J and I continued the hearing on 14th February, 2008. On that day the learned counsel for the Respondent Mrs. J. Thongori informed the court that the Respondent did not intend to defend the petition or to prosecute the cross-petition.

The Petitioner after giving details of the marriage and his assistance to the Respondent to further her education deponed that the Respondent was a compulsive drunkard. He recalled an instance of early 1998 when he flew to Cape Town when the Respondent was unwell. When he rang her at home she was incoherent and had friends with her. Her habit necessitated a monitor or an anchor at home. She was sent to her parents' home with her undertaking to rectify her drinking problem, which she admitted needed rectification.

She was drinking when pregnant. Then their daughter was born. Even when they went to celebrate her birth, she drank all the drinks from the Mini Bar of the hotel room when their daughter had just been born.

Thereafter the Respondent became totally uncommunicative and stayed always inside the bed-room and totally refused to interact with anyone. She was unable to look after their daughter.

Then the Petitioner decided to take medical advice and was told that her behaviour could be due to postnatal depression. It was advised that she should be hospitalized due to her serious condition. But when he was removing her personal things at the Hospital Parking, he found 12 bottles of alcoholic drinks and pornographic materials. At the hospital she was diagnosed as suffering from alcohol abuse.

His efforts to have consultants to give her sessions were refuted by her being of no use. I may not give details in this ruling the reasons of her alcoholism but they were diagnosed as issues prior to marriage. The postnatal depression was ruled out. She also underwent rehabilitation programmes for 4 weeks. When she was brought back, he went shopping leaving the daughter with the Respondent. On return he found the daughter crying on the bed and found the Respondent on the floor unconscious. She was drunk. Many instances were deposed by the Petitioner and I need not describe all of them. Suffice it would be that they were showing irreversible abuse of alcohol by the Respondent. He tried to give support in all manners but of no avail. All these times, he felt most devastated, emotionally and financially. He had spent £18,000 on her hospitalization.

Her condition did not improve and all efforts made by the Petitioner were brought to naught.

Then he gave evidence on the effect of her abuse of alcohol on the daughter. According to him the daughter was neglected by her prior to the birth, due to her alcohol abuse and smoking and after the birth she has been unable to take care of the daughter in any way, because of her alcoholism. Personal report/record of the daughter, Kenya, was produced to show the daughter's inability to grow normally. (Ex.2), and having fallen completely off the normal growth chart. Dr. Melisa Lees, who examined the daughter (Kenya) on 23rd March, 2000, came to the conclusion that Kenya's failure to thrive could have been contributed by her mother's alcoholism. This conclusion was confirmed by Dr. Diana P.H. Smith who examined Kenya during the same time.

All other doctors named by the Petitioner, I shall name a few like Mr. Tom Fry, Dr. David Githanga, Dr. Forbes were in agreement that Kenya has failed to thrive due to lack of proper care, both parental and nutritional which had led to Marasmic malnutrition.

The Petitioner thereupon decided to do research on the effect of alcohol and cigarettes on a child whose mother is alcoholic. The articles on Environmental Tobacco Smoke Exposure Gastro esophageal Reflux in Infants with Apparent Life – Threatening Events and Understanding the Occurrence of Secondary Disabilities in clients with Fetal Alcohol Syndrome (FAS) were produced. They were very illustrative and eye opener. I may not give their details but I shall definitely state that the alcohol abuse during pre-natal stages by the mothers result in life threatening and serious disabilities in the infants. Kenya is one of such children, unfortunately, who is diagnosed in July 2006 with Alcohol related Neurodevelopment disorder.

Thus the Petitioner has proved as per required standards of proof that the present condition of the daughter Kenya is due to the Respondent's alcohol consumption and smoking during pregnancy and after the birth.

Her neglect is continuous as she has not seen the daughter regularly although she has been given daily access. During the period from 8th May, 2000 to September, 2007, the Respondent had seen the daughter for about 23 days.

The Petitioner's studious testimony has not been controverted. I have seen him during testimony and a picture of sad husband and unhappy father has been portrayed. I have no reason not to believe him and find that the Respondent has been cruel to the Petitioner and has been very seriously negligent to the Petitioner and child of marriage, Kenya.

Their marriage is broken totally due to those unfortunate behaviour of the Respondent.

Obviously, I do find from the evidence before me that the Petitioner has not connived or condoned the acts of cruelty to him and the child, as well as her desertion.

In view of the premises, I do allow the petition for divorce and order that the marriage solemnized between the parties be dissolved. There is on record, the orders of custody and access in respect of the daughter, Kenya.

I also direct that decree nisi be made absolute within 45 days.

Dated and signed at Nairobi this 4th day of April, 2008.

K. H. RAWAL

JUDGE

4.4.08